



U.S. ENVIRONMENTAL PROTECTION AGENCY

**OFFICE OF INSPECTOR GENERAL**

# **Briefing Report: Review of EPA's Process to Release Information Under the Freedom of Information Act**

Report No. 14-P-0262

May 16, 2014



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## Report Contributors:

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## Abbreviations

CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FOIA	Freedom of Information Act
FY	Fiscal Year
OARM	Office of Administration and Resources Management
OEI	Office of Environmental Information
OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
ORD	Office of Research and Development
OSWER	Office of Solid Waste and Emergency Response
OW	Office of Water

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Washington, DC 20460

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1200 Pennsylvania Avenue, NW  
Mailcode 2410T  
Washington, DC 20460



# At a Glance

## Why We Did This Review

In Office of Inspector General planning outreach we conducted with the U.S. Environmental Protection Agency (EPA) and congressional sources, they expressed concern about possible inconsistencies in how the EPA decides what information to release under the Freedom of Information Act (FOIA). In response, we conducted this review to determine how the EPA offices and regions decide what information to release under the FOIA.

The FOIA is a law that governs public access to U.S. government records. FOIA carries a presumption of disclosure.

### This report addresses the following EPA theme:

- *Embracing EPA as a high performing organization.*

For further information, contact our public affairs office at (202) 566-2391.

The full report is at:  
[www.epa.gov/oig/reports/2014/20140516-14-P-0262.pdf](http://www.epa.gov/oig/reports/2014/20140516-14-P-0262.pdf)

## Briefing Report: Review of EPA's Process to Release Information Under the Freedom of Information Act

### What We Found

Each EPA region and headquarters office has processes for addressing FOIA requests. While the regional and headquarters' processes vary, they all lead to a decision to release or withhold information based on an evaluation of the request and the exemptions and exclusions prescribed in the FOIA. To ensure consistency in the processes used throughout the agency, the EPA's Office of Environmental Information approved agencywide Interim FOIA Procedures in September 2013, and plans to finalize them by the end of September 2014.

During our review, we obtained and reviewed FOIA procedures from all 10 regions and four headquarters program offices, and found the following:

- All offices, except one, had internal FOIA procedures in writing to varying degrees. For example, some procedures were still in draft or were dated prior to the EPA's implementation of its current online electronic system for processing FOIA requests—FOIAonline. In addition, some were detailed while others consisted of a basic flowchart or narrative description of the process.
- Seven offices (three EPA regions and all four headquarters program offices reviewed) had procedures that were not consistent with the EPA's current interim FOIA procedures. Primarily, the procedures did not include language regarding the use of FOIAonline, or were silent or unclear regarding who has the authority to sign EPA letters responding to FOIA requests.

### Recommendations and Planned Agency Corrective Actions

We recommend that the EPA Assistant Administrator for Environmental Information: (1) issue the final agency FOIA procedures by September 30, 2014; and (2) require that Senior Information Officials at each region and headquarters program office certify that their local FOIA procedures are consistent with the agency's final procedures by March 31, 2015. The EPA agreed with both of our recommendations, and its actions, when completed, will address the issues presented in this report. All recommendations are resolved.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

May 16, 2014

**MEMORANDUM**

**SUBJECT:** Briefing Report: Review of EPA's Process to Release Information Under the Freedom of Information Act  
Report No. 14-P-0262

**FROM:** Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is placed next to the name in the "FROM:" field.

**TO:** Renee Wynn, Acting Assistant Administrator and Chief Information Officer  
Office of Environmental Information

This is a briefing report on the subject evaluation conducted by the Office of Inspector General of the U.S. Environmental Protection Agency (EPA). This report represents the opinion of the OIG and does not necessarily represent the final EPA position. In accordance with established audit-resolution procedures, EPA managers will make final determinations on matters in this report.

**Action Required**

You are not required to provide a written response to this final report because you agreed to all recommendations and provided corrective actions and planned completion dates that meet the intent of our recommendations. The recommendations remain open with corrective actions ongoing. Please update the EPA's Management Audit Tracking System as you complete the planned corrective actions for these recommendations and notify my staff if there is a significant change in the agreed-to corrective actions. We will post this report on our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact the Assistant Inspector General for Program Evaluation, Carolyn Copper, at (202) 566-0829 or [copper.carolyn@epa.gov](mailto:copper.carolyn@epa.gov); or the Director, Patrick Gilbride, at (303) 312-6969 or [gilbride.patrick@epa.gov](mailto:gilbride.patrick@epa.gov).

U.S. Environmental Protection Agency

# Office of Inspector General

- Review of EPA's Process to Release Information Under the Freedom of Information Act

- Report No. 14-P-0262  
May 16, 2014

# Assignment Objective

Our assignment objective was to determine how the U.S. Environmental Protection Agency (EPA) offices and regions decide what information to release under the Freedom of Information Act (FOIA).

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# Background

- FOIA is a law governing public access to the U.S. government records. FOIA carries a presumption of disclosure.
- At the EPA, the FOIA program is decentralized. The Agency FOIA Officer manages a small staff in headquarters, and each region and headquarters program office has a FOIA Coordinator and staff involved in processing FOIA requests on a full- or part-time basis. In most cases, the FOIA office will assign the request in FOIAonline to the primary FOIA Coordinator in the program or regional office believed to most likely house the majority of responsive records.
- FOIAonline is the new online system the EPA uses for processing FOIA requests. The EPA introduced this system at the beginning of fiscal year (FY) 2013. The requirement to use FOIAonline to manage all FOIA requests did not become effective until June 28, 2013, through the interim FOIA policy.
- The agency approved its *Interim Procedures for Responding to Freedom of Information Act (FOIA) Requests* on September 30, 2013. These procedures address statutory, regulatory, policy, procedural and processing requirements to be followed by all EPA organizations in responding to FOIA requests submitted to the EPA. The procedures must comprise the core of any office-specific response procedures that are developed and implemented in the EPA.
- According to the Agency FOIA Officer, the interim policy and procedures are expected to become final by the end of FY 2014. At that time, regions and offices will have 6 more months (around March 2015) to establish office specific procedures that are consistent with the interim procedures.

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# Background (continued)

Table 1 shows that, between FYs 2010-2012, EPA received 30,221 FOIA requests. Of those, EPA partially or fully denied 2,182 requests (about 7.2 percent). Requests were fully denied in less than 1 percent of the cases.

**Table 1: Breakdown of FOIA requests received/denied  
(FYs 2010-2012)**

Fiscal year	Requests received	Partial grants/ partial denials	Full denials (based on exemptions)
<b>2012</b>	9,689	609 (6.29%)	96 (0.99%)
<b>2011</b>	10,123	676 (6.68%)	94 (0.93%)
<b>2010</b>	10,409	607 (5.83%)	100 (0.96%)
<b>3-Year Total</b>	<b>30,221</b>	<b>1,892 (6.26%)</b>	<b>290 (0.96%)</b>

Source: EPA FOIA Annual Reports.

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# Criteria

- 5 U.S.C. § 552, Freedom of Information Act.

The act identifies exemptions—categories of information that are not required to be released to a FOIA requestor because release would be harmful to governmental or private interests. The act also excludes certain information related to law enforcement and national security from the requirements of FOIA. See a list of the FOIA exemptions on the following slide.

- 40 CFR, Part 2, Subpart A, *Procedures for Disclosure of Records Under the Freedom of Information Act*.

This subpart contains the rules that the EPA follows in processing requests for records under the FOIA.

- CIO 2157.0, *Interim Freedom of Information Act (FOIA) Policy*, June 28, 2013.

“All FOIA requests received at the EPA will be managed throughout their life cycle in FOIAonline, the Agency’s new FOIA processing and records repository tool. All records provided by the EPA in response to a FOIA request must be entered into FOIAonline unless subject to special handling requirements or policies.”

- CIO 2157-P-01-0, *Interim Procedures For Responding To Freedom of Information Act (FOIA) Requests*, September 30, 2013.

These interim procedures provide basic instructions for responding to FOIA requests submitted to the EPA and must comprise the core of any office-specific FOIA response procedures that are developed and implemented in the EPA .

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# Criteria (continued)

## FOIA Exemptions

- **Exemption 1:** Classified national defense and foreign policy information.
- **Exemption 2:** Internal personnel rules and practices of an agency.
- **Exemption 3:** Information that is prohibited from disclosure by another federal law.
- **Exemption 4:** Trade secrets and other confidential business information.
- **Exemption 5:** Inter-agency or intra-agency communications that are protected by legal privileges.
- **Exemption 6:** Information involving matters of personal privacy.
- **Exemption 7:** Certain records or information compiled for law enforcement purposes.
- **Exemption 8:** Information relating to the supervision of financial institutions.
- **Exemption 9:** Geological information on wells.

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# Scope & Methodology

- Reviewed key criteria (federal statute, regulations, and EPA policies and procedures).
- Reviewed prior U.S. Government Accountability Office and the EPA Office of Inspector General reports.
- Interviewed FOIA personnel at headquarters and Regions 4 and 6. The Agency FOIA Officer is located in headquarters, and we selected Regions 4 and 6 due to a large number of FOIA requests partially or fully denied in FY 2012 compared to other regions (Region 4), and senior managers having expressed concern about the FOIA process to the OIG prior to our review (Region 6).
- Selected and reviewed a sample of 33 requests that were fully or partially denied or appealed during FY 2013, as follows:

	R4	R6	HQ	<u>Total</u>
<b>Sample size</b>				
Partial denials	4	1	11	16
Full denials	2	2	3	7
Appeals	1	1	8	10
	7	4	22	33
<b>Universe</b>				
Partial denials	78	23	218	319
Full denials	2	2	62	66
Appeals	3	6	159	168
	83	31	439	553

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# Scope & Methodology (continued)

- Selected and reviewed an additional sample of 12 requests that resulted in either full or partial denials and were received on or after July 1, 2013 (after the interim policy went into effect requiring full use of FOIAonline).
  - No requests resulting in a full denial were received in Regions 4 or 6 from July 1, 2013, to the date we selected our sample. Therefore, we selected two requests listed as partial denials for each region.
  - From headquarters, we selected four requests received on or after July 1, 2013, that were listed as full denials and four requests listed as partial denials.
- Requested and obtained FOIA procedures from all 10 regions and four headquarters program offices: Office of Administration and Resources Management (OARM), Office of Research and Development (ORD), Office of Solid Waste and Emergency Response (OSWER), and Office of Water (OW). We selected those four headquarters program offices for review because those offices, in their FY 2012 Federal Managers Financial Integrity Act submissions, made no mention of their FOIA programs. We reviewed existing procedures to determine whether they were consistent with the EPA's interim FOIA procedures.
- During FY 2013, the EPA's FOIA program underwent changes in its data tracking systems, policies and procedures. Some of these changes are not yet fully implemented. Therefore, we conducted limited testing of the effectiveness of EPA's FOIA process.
- We conducted our work from August 2013 to January 2014.

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# Overall Results

Each EPA region and office has processes for addressing FOIA requests. While the regional and headquarters' processes vary, they all lead to a decision to release or withhold information based on an evaluation of the request and the exemptions and exclusions prescribed in the FOIA. Common elements of the regional and headquarters' processes include:

- Ensure that the request is clearly stated and has sufficient contact information about the requester.
- Assign the request to the appropriate individual who can effectively conduct the research on a given request.
- Monitor the processing to ensure timely responses and/or extensions.
- Coordinate with legal counsel as needed.
- Communicate with the requester as needed.

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# Overall Results (continued)

- For requests received prior to July 2013 (when the interim FOIA policy was issued), we identified some minor input errors in FOIAonline and cases where documentation was not uploaded into the system. For requests received on or after July 1, 2013, we did not find any instances where required documentation was missing.
- All 10 regions and three of the four headquarters program offices we sampled had FOIA procedures in writing, to varying degrees. Some procedures were still in draft or dated prior to the implementation of FOIAonline. Some were detailed while others simply included a flow chart or a narrative description of the process.
- Seven of the 14 regional and headquarters offices we reviewed had procedures that were not consistent with the EPA's interim procedures. The table in the next slide shows a detailed breakdown of whether regions and offices had formal procedures and whether the procedures were consistent with the EPA's interim procedures.

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Region/office	FOIA procedures documented	FOIA procedures signed/ approved	Consistent with FOIA interim procedures?
	<b>Yes = 13; No = 1</b>	<b>Yes = 3; No = 11</b>	<b>Yes = 7; No = 7</b>
Region 1	YES	YES	YES
Region 2	YES	NO	YES
Region 3	YES	YES	NO
Region 4	YES	NO	YES
Region 5	YES	NO	YES
Region 6	YES	YES	NO
Region 7	YES	NO	NO
Region 8	YES	NO	YES
Region 9	YES	NO	YES
Region 10	YES	NO	YES
OARM	YES	NO	NO
ORD	YES	NO	NO
OSWER	YES	NO	NO
OW	NO	NO	NO

**Note:** For purposes of our review, procedures had to incorporate information about FOIAonline to be considered consistent with the EPA's interim FOIA procedures.

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# Conclusions

- The EPA does not plan to finalize its FOIA policy and procedures until the end of FY 2014. During this period of transition, the EPA should make it clear that regions and offices should be following the agency's FOIA interim procedures.
- The EPA will require regions and program offices to develop internal FOIA procedures that are consistent with the new final agency procedures. Based on a timeframe negotiated within the EPA by the Office of General Counsel and all Regional Counsels, the EPA plans to give regions and program offices 6 months from the date when the interim procedures are finalized to comply with this requirement. At that point, the EPA must ensure accountability by requiring that each region and program office certifies that their local procedures are consistent with the final agency procedures. While it will be about another year before regions and offices will be required to have documented procedures in place that are consistent with national procedures, the EPA should encourage regions and offices to address any inconsistencies before then.

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# Recommendations

We recommend that the EPA Assistant Administrator for Environmental Information:

- (1) Issue the final agency FOIA procedures by September 30, 2014.
- (2) Require that Senior Information Officials at each region and program office certify that their local FOIA procedures are consistent with the agency's final procedures by March 31, 2015.

## Agency Response and OIG Evaluation

The agency agreed with both of our recommendations. We have reviewed the proposed corrective actions and timeframes and agree with the agency's plans for complying with our recommendations. All recommendations are resolved.

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## ***Status of Recommendations and Potential Monetary Benefits***

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	13	Issue the final agency FOIA procedures by September 30, 2014.	O	Assistant Administrator for Environmental Information	9/30/14		
2	13	Require that the Senior Information Officials at each region and program office certify that their local FOIA procedures are consistent with the agency's final procedures by March 31, 2015.	O	Assistant Administrator for Environmental Information	3/31/15		

<sup>1</sup> O = recommendation is open with agreed-to corrective actions pending  
C = recommendation is closed with all agreed-to actions completed  
U = recommendation is unresolved with resolution efforts in progress

## ***Agency Response***

April 8, 2014

### **MEMORANDUM**

**SUBJECT:** Response to Office of Inspector General Briefing Report No. OPE-FY13-0027, "Review of EPA's Process to Release Information Under the Freedom of Information Act."

**FROM:** Renee Wynn /s/  
Acting Assistant Administrator  
and Chief Information Officer

**TO:** Arthur A. Elkins, Jr.  
Inspector General

Thank you for the opportunity to review and respond to the recommendations in the subject audit briefing report. Following is a summary of the agency's overall position, along with its position on each of the briefing report recommendations.

**AGENCY'S OVERALL POSITION:** OEI agrees with the recommendations and plans to address each recommendation by the estimated completion dates for the corrective actions as listed in the agreements table below.

OEI understands the OIG will incorporate OEI's response and then issue the briefing report as final. The audit will then be closed upon issuance of the final report. The two recommendations and corrective actions will be tracked in the Management Audit Tracking System (MATS) until completed.

I want to assure you that EPA is committed to continuous improvements to the FOIA program. We have made great strides in implementing the recommendations from the Deputy Administrator's FOIA workgroup and will continue to implement the workgroup's recommendations. Recent improvements in the FOIA program include:

- Issuing an interim FOIA policy and interim FOIA processing procedures;
- Establishing an implementation schedule for the 22 FOIA recommendations made by the FOIA Workgroup;
- Beginning quarterly reporting to the Deputy Administrator on the progress made in implementing the FOIA Workgroup recommendations;

- Sending a quarterly report to Agency Deputy Assistant Administrators and Deputy Regional Administrators on the processing status of FOIA requests in their organizations;
- Delivering training to the Agency's FOIA coordinators and FOIA officers; and other FOIA professionals, employees and managers who make decisions on the release of documents; and
- Developing a new FOIA Intranet site that provides immediate access to FOIA guidance, management reports, tools, and training courses.

If you have any questions regarding this response, please contact Larry Gottesman, EPA's FOIA Officer, on 202-566-2162 or Scott Dockum, OEI Audit Follow-Up Manager, at 202-566-1914.

## **AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS**

### **Agreements**

<b>No.</b>	<b>Recommendation</b>	<b>High-Level Intended Corrective Action(s)</b>	<b>Estimated Completion by Quarter and FY</b>
1	Issue the final Agency FOIA procedures by September 30, 2014.	OEI concurs with the recommendation.	4 <sup>th</sup> Quarter FY 2014
2	Require that Senior Information Officials at each region and program office certify that their local FOIA procedures are consistent with the Agency's final procedures by March 31, 2015.	OEI concurs with the recommendation.	2nd Quarter FY 2015

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